

HARDY MYERS
Attorney General



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Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

March 21, 2002

By Federal Express

Elizabeth McKenna
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Ave.
Seattle, WA 98101

Re: Portland Harbor

Dear Elizabeth:

Enclosed is an original of DEQ's executed signature page for the Letter Agreement among DEQ, EPA, and the Corps of Engineers.

Thanks for your professional courtesies in completing this agreement.

Sincerely,

Kurt Burkholder
Assistant Attorney General
Natural Resources Section

KBB:lan/GENB3809

Encl.

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OFFICE OF REGIONAL COUNSEL
EPA - REGION X

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Letter of Agreement
Between the
U.S. Environmental Protection Agency, Region 10, the
Oregon Department of Environmental Quality and
the U. S. Army Corps of Engineers, Portland District
Concerning the
Lower Willamette River

This agreement is made between and among the United States Army Corps of Engineers (USACE), Portland District, the United States Environmental Protection Agency (EPA) Region 10, and the Oregon Department of Environmental Quality (ODEQ) (the Parties).

PURPOSE

EPA, USACE, and ODEQ share complementary responsibilities within the Portland Harbor Superfund Site (Site). The purpose of this agreement is to foster and promote more effective communication and to establish a long-term coordination strategy between USACE, EPA, and ODEQ.

The agencies concur with and accept the coordination strategy set forth in this agreement. This is intended to clarify the respective responsibilities of the EPA, USACE, and ODEQ with regard to the Site. It is also intended to facilitate and encourage a more streamlined and effective means of carrying out the agencies' statutory and regulatory responsibilities and allow for flexibility where appropriate. In the interest of better serving the public, agency practices as they pertain to the Site will be reviewed and evaluated and wherever possible be standardized and clearly articulated.

The Parties intend to coordinate with each other in carrying out their obligations at the Site, with the following objectives:

- Ensuring that actions taken at the Site by any of the agencies are consistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) laws and regulations.
- Ensuring open and regular communication among the agencies regarding actions taken by the agencies.
- Ensuring that schedules established through the CERCLA process as well as program schedules that must be adhered to by USACE are not delayed.

- Ensuring that all parties will work toward assisting USACE in the fulfillment of its currently authorized maintenance dredging and permitting responsibilities within the Site.
- Ensuring coordination regarding performance of activities pursuant to Section 312 of the Water Resource Development Act of 1990 (WRDA), as amended by Section 205 of WRDA 1996 and Section 224 of WRDA 1999 (the statute and these amendments are collectively referred to in this Agreement as "Section 312 of WRDA"), and the integration of such activities into the CERCLA Remedial Investigation and Feasibility Study (RI/FS).
- Ensuring that the parties resolve issues and address the means by which USACE may meet its objective of obtaining protection from liabilities that may arise from maintenance, regulatory, or environmental dredging.

AGENCY INVOLVEMENT AT THE SITE

EPA's involvement at the Site. Pursuant to an Administrative Order on Consent (AOC) entered into on September 28, 2001 between EPA and nine potentially responsible parties (PRPs), an RI/FS will be conducted by the PRPs with EPA oversight to determine the nature and extent of contamination at the Site. (See, Attachment 1) This RI/FS will be conducted pursuant to CERCLA and its implementing regulations, the National Contingency Plan (NCP). EPA is also a designated Support Agency for permitting activities under Section 404 of the Clean Water Act and restoration activities under Section 312 of WRDA.

ODEQ's involvement at the Site. Through a Memorandum of Understanding (MOU) among EPA, ODEQ, State and Federal natural resource trustees, and six Indian tribes, ODEQ has been designated a Support Agency for in-water RI/FS work conducted pursuant to the AOC, and Lead Agency for site investigation and source control work conducted on the upland portion of the Site. (See, Attachment 2, Memorandum of Understanding for the Portland Harbor Superfund Site). Consistent with this MOU, ODEQ will apply state law authorities to identify sources of contamination to the Willamette River and require source control measures as necessary, review and comment on deliverables submitted to EPA pursuant to the AOC, and, pursuant to CERCLA, participate in the selection and implementation of response actions at the Site. ODEQ also administers Section 401 of the Clean Water Act and state water quality laws, which may be applicable to actions by the agencies at the Site.

USACE's involvement at the Site. USACE's involvement in the area which has been designated the Site is multifaceted. 1) Pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act, USACE issues permits for dredging and filling. 2) USACE also monitors and maintains the Federal Navigation Channel, as authorized by congress, pursuant to the Commerce Clause of the United States. 3) The Environmental Dredging

authority of Section 312 of WRDA may be used to plan and design any USACE environmental projects within the Site. 4) USACE is a potentially responsible party at the Site as owner and operator of a facility (US Moorings). 5) USACE Technical Assistance to EPA during the RI/FS may come from USACE entities other than the Portland District.

AGENCY COORDINATION

Issuance of permits by USACE. For any permit issuance or permit application processed by USACE for any facility or area located between the confluence of the Willamette and Columbia Rivers and the Willamette Falls, USACE will coordinate with EPA regarding consistency of permit activities with CERCLA and the NCP and will ensure that any certifications required under the CWA are obtained from ODEQ. EPA will review permits and permit applications and make recommendations to USACE, which may include permit conditions, modifications, or work stoppage. EPA will ensure that the impact of USACE's permitting activities on the RI/FS are evaluated. Consistent with the attached MOU, EPA will coordinate with ODEQ in its assessment of permits and permit applications, and will timely provide such assessments to USACE. ODEQ will coordinate with USACE and EPA regarding CWA compliance and provide for the timely review of any permit applications and issuance of certifications required under the CWA.

Federal Channel Maintenance Dredging Responsibilities. Prior to any Federal Navigation Channel dredging activities, including in-water disposal, performed pursuant to the Dredged Material Management Plan (DMMP) between the confluence of the Willamette and Columbia Rivers and the Willamette Falls, USACE will coordinate with EPA and obtain from ODEQ any certifications required under the CWA. EPA will ensure that the impact of USACE's Federal channel maintenance dredging responsibilities on the RI/FS are evaluated. EPA will coordinate with ODEQ in its evaluation of proposed dredging activities. ODEQ will coordinate with USACE and EPA regarding CWA compliance and provide for timely review of any dredging activities or issuance of certifications required under the CWA.

Environmental Dredging Responsibilities. The scope of this agreement addresses feasibility study and other investigative activities relevant to the Portland Harbor RI/FS that might be performed pursuant to Section 312 of WRDA. The scope of this agreement does not address environmental dredging under Section 312 of WRDA after issuance of EPA and USACE records of decision (RODs). Any activities under Section 312 of WRDA after issuance of EPA and USACE RODs will be addressed by a future agreement among the agencies. Although specific tasks to be performed by USACE or others pursuant to Section 312 of WRDA have not yet been determined, USACE, EPA, and ODEQ agree that such tasks will be coordinated among the agencies and may be integrated into the RI/FS process, as appropriate. The process of evaluating whether a task performed pursuant to Section 312 of WRDA is appropriate for integration into the RI/FS will include input from each of the agencies. Important factors to be considered will be conformity with the schedule and objectives of EPA's RI/FS. The parties recognize that any WRDA task at the Site that is not integrated into the RI/FS will require compliance with NEPA.

The agencies agree that a task performed pursuant to Section 312 of WRDA should not be integrated into the RI/FS if such integration would unreasonably delay the RI/FS schedule or be inconsistent with RI/FS objectives. Task integration will be approved by EPA with ODEQ in their respective roles as Lead and Support Agencies pursuant to the NCP. If a WRDA task is proposed to serve, in part, to assist in the assessment or restoration of natural resource injuries or damages, the agencies recognize that natural resource trustees, who have jurisdiction over all CERCLA natural resource activities, should also be consulted regarding RI/FS integration.

U.S. Moorings. EPA and USACE will enter into an appropriate legal agreement to address any source control or sediment contamination related to the U.S. Moorings facility. EPA will coordinate with ODEQ, the Tribes, and natural resource trustees in negotiating such an agreement with USACE.

PROJECT MANAGERS

The Project Managers for the Parties at the Site will serve as the contact persons under this Agreement. A Party may change its Project Manager by written notice to the other Parties.

For USACE: John Etzel - U.S. Moorings (503) 808-4706
Laura Hicks - DMMP (503) 808-4705
Doris McKillip - O&M Dredging (503) 808-4345
Mike Gross - Environmental Dredging (503) 808-4913
Larry Evans - Permits (503) 808-4370

For ODEQ: Eric Blischke (503) 229-5848

For EPA: Wallace Reid (206) 553-1728
Chip Humphrey (503) 326-2678
John Malek (206) 553-1286

DISPUTE RESOLUTION

1. With respect to decisions made pursuant to this Agreement, EPA, ODEQ, and USACE will attempt to resolve disagreements informally among staff and Project Managers. However, if the parties cannot resolve a dispute informally, the following dispute resolution process will be used:
2. Any unresolved dispute will be elevated to the first-line managers of the Project Managers for EPA, ODEQ, and USACE. A Party may change this contact by written notice to the other Parties.

For USACE: Martin Hudson, Chief Planning Branch
Dave Beach, Chief Channels and Harbors Branch

For ODEQ: Mike Rosen, Technical Manager, Northwest Region

For EPA: Amber Wong, Unit Manager, Office of Environmental Cleanup

3. If the Parties continue to disagree, the matter will be elevated through the appropriate management level to the next level of management at EPA, ODEQ and USACE, who will determine whether additional management personnel should be consulted. The final arbiter of disputes within the organizations will be as follows (unless changed pursuant to written notice to the other Parties):

For USACE: Davis Moriuchi, Deputy District Engineer for Project Management

For ODEQ: Neil Mullane, Administrator, Northwest Region

For EPA: Michelle Pirzadeh, Associate Division Director, Environmental Cleanup Office

4. To avoid any significant disruption to work, disputes should be resolved as expeditiously as possible. When informal dispute resolution between the Project Managers does not resolve a dispute, the Project Managers will elevate the dispute within ten working days. Generally, the agencies will strive to resolve disputes within 20 working days. The dispute resolution procedures related to any work on a critical time path will be expedited so as to be consistent with schedules set forth in the relevant agreement or other scheduling document.

PERIODIC MEETINGS

The Parties will, at a minimum, meet monthly via teleconference or in person to review activities conducted under this Agreement and other related activities of the Parties. If any of the Parties determine it is necessary to meet more or less frequently, the Parties will establish regular meeting times to accommodate such a request.

CONFIDENTIALITY

EPA, ODEQ, and USACE recognize that to effectively and efficiently exercise their authorities concerning the Site, their counsel, employees, and consultants may exchange documents and information subject to attorney-client privilege, attorney work product, and other forms of privilege. The Parties intend to keep certain information shared under this Agreement confidential.

Whenever sharing information deemed confidential, the Party shall clearly mark any information to which it asserts a privilege as "Privileged and Confidential Information Do Not Release

Without Authorization." The Party receiving information so marked agrees not to release, or allow to be released, such information to a non-party, to the extent permitted by law. The Parties agree that failure to so mark information developed or shared under this Agreement does not preclude the parties from asserting the protections under the Freedom of Information Act or

Oregon law, or from asserting privileges and exceptions in seeking to protect the information from discovery.

AUTHORITIES

Nothing in this agreement will, in any way, alter the specific statutory or regulatory authorities or responsibilities assigned to the EPA, USACE and ODEQ. This agreement merely establishes a mechanism of cooperation, coordination, and conflict resolution. Success of this agreement will be evidenced by the efficient accomplishment of each agency's statutory requirements within areas of mutual concern in a timely manner and by minimizing misunderstandings, duplication of effort, and unnecessary conflicts between the parties.

FUNDING

The Parties acknowledge that coordination through this agreement is subject to the availability of federal or other funds. Situations may develop in which short-term limitations in the agency resources do not allow full participation in the procedures outlined in this agreement. Therefore, the Parties agree that, as appropriate, they will jointly support requests for additional resources for purposes of implementing this agreement.

UNITED STATES ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT

BY:

Davis Moriuchi

Date:

3/20/02

Davis Moriuchi

Deputy District Engineer for Project Management
Portland District Corps of Engineers

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10

BY: Michelle Pirzadeh DATE: 3/20/08

Michelle Pirzadeh, Associate Director
Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: Neil Mullane
Neil Mullane
Administrator, Northwest Region

DATE: 3/18/02